IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1467 OF 2006

Maharashtra General Kamgar Mahasangh . ..... Petitioner
vs.
Mistry Prabhudas Manaji Engineering
Pvt. Ltd. & anr. ... . Respondents

Mr. N. M. Ganguly for petitioner
Mr. S. K. Talsania with Pankaj Kansara
i/b. K. Kharawala for respondents 1 &2.

CORAM: D. G. KARNIK **J.**

DATE:18/7/2006

ORAL JUDGMENT :

1. This petition raises an interesting question of law viz. whether the interim order passed under section 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'the Act' ,) can be enforced by making an application for recovery under section 50 of the Act.

2. The basic facts are few and are not in dispute. The petitioner which is a trade union registered under the Act filed a complaint against the respondents under section 28 of the Act

alleging that the respondents were guilty of unfair labour practice, inasmuch as they had not paid the wages to the workmen employed by them from January 2000 till the date of the complaint. It prayed for a declaration that the conduct of the respondent in not paying the wages amounted to an unfair labour practice under item 9 of Schedule IV to the Act and also prayed for an order directing the respondents to pay the wages from January 2000 till date. In the complaint the petitioner made an application for interim injunction restraining the respondents from selling or otherwise creating any third party interest in the plant and machinery, or the landed property and also prayed for interim mandatory order for payment of wages from January 2000 till date. By an order dated 7th February 2005 the Industrial Court granted interim injunction restraining the respondents from selling, disposing of or creating any third party interest in the property. Thereafter by a further order dated 29th January 2005 the Industrial Court directed the respondents to pay to the concerned employees wages from January 2000 till the date of the complaint and also during the pendency of the complaint. As the respondents failed to pay the

wages despite this order the petitioner filed an application, purportingly under section 50 of the Act, obtaining a recovery certificate addressed to the collector. By an order dated 12th January 2006 the Industrial Court rejected the application as not maintainable. That order is impugned in this petition.

3. Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 reads as under:

> "50. **Recovery of money due from employer:** - Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery due to him, and if the Court is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, who shall, proceed to recover the same in the same manner as an arrear of land revenue:
>
> Provided that, every such application shall

> be made within one year from the date on which the money became due to the employee from the employer:
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> Provided further that, any such application may be entertained after the expiry of the said period of one year, if the Court is satisfied that the applicant had sufficient cause for not making the application within the said period."

4. A bare reading of section 50 would show that the Labour Court or the Industrial Court, as the case may be, may issue a certificate to the Collector that any money which is due from an employer to an employee under an order passed by it under chapter VI of the Act has not been paid. On receipt of the certificate the Collector is entitled to recover the amount as arrears of land revenue. The basic condition for issuance of a certificate under section 50 is satisfaction of the court that the money is due to an employee from an employer under an order passed by the court under Chapter VI of the Act. Chapter VI of the Act consists of four sections viz., sections 26 to 29. Section 30 is not a part of Chapter VI but is a part of Chapter VII. The

Industrial Court has held that the impugned order for payment of wages was passed by it under section 30 of the Act and not under Chapter VI and therefore a certificate under section 50 could not be issued. The remedy of the petitioner was to recover money under section 33C (2) of the Industrial Disputes Act or under any other method available to it under the law and not by making an application under section 50 of the Act.

5. Mr. Ganguly, learned counsel for the petitioner submitted that the Act was a beneficial legislation made for the protection of the workmen and prevention of unfair labour practices by the employers. Non payment of salary is one of the many unfair labour practices committed by the employer. The Act aims at preventing such acts and has provided a quick and early method of recovery of the wages. Section 30 empower the court to grant interim relief. An order for payment of wages passed by way of interim relief under section 30 must be construed as an extension of the power of the court to grant final relief under section 28. If so interpreted the order passed under section 30 which falls under Chapter VII of the Act can also be construed as

an order passed in pursuance of the power conferred under section 28 , falling under Chapter VI. Being a beneficial legislation made for the benefit of the workmen the mischief rule should be applied for interpretation. The court must look into the mischief which existed before the Act was made, viz., non-payment of the wages by the employer. The Act was enacted to prevent this mischief and provide for a remedy against the employer indulging in an unfair labour practice. Section 50 must be so construed so as to include the power to grant the certificate even though the order is passed under section 30 not falling under Chapter VI of the Act. In support of his submissions the learned counsel relied upon a decision of the Supreme Court in K. C. P. Employees' Association, Madras vs. Management of K. C. P. Ltd., Madras and ors., reported in 1978 (1) L.L.J. 322.

6. Per contra, Mr. S. K. Talsania, learned counsel for the respondents pressed for literal interpretation. He submitted that the words used in section 50 of the Act are clear and unambiguous. They clearly state that an application can be

made if the money was due under an order passed under Chapter VI of the Act. Only for execution an order of payment of money passed under Chapter VI of the Act a recovery certificate can be issued under section 50. No order other than the order for payment of money passed under Chapter VI of the Act can be executed under section 50 of the Act. Rule of beneficial construction and the mischief rule can be applied only where the meaning of a statute is ambiguous. If the meaning of a statute is clear and the words used are un-ambiguous the court cannot expand the remedy provided by the legislature. In support he referred to and relied upon the decision of the Supreme Court in **Steel Authority of India Ltd., and ors vs. National Union Waterfront Workers and ors.** , reported in (2001) 7 SCC 1, and in particular the observations in para 105 therein.

7. Before I deal with the rival contentions it would be necessary to briefly refer to the scheme of the Act. The Act was enacted interalia for recognition of trade unions for helping collective bargaining in certain undertakings and to state the rights and

obligations of the trade unions and to confer powers on certain unrecognized unions and for prevention of unfair labour practices. We are not concerned in this case with that part of the Act which relates to the trade unions, their rights, powers and obligations and are only concerned with the part of the Act which relates to the unfair labour practices by the employer. Provisions have been made in the Act for preventing an employer from committing an unfair labour practice and conferring rights on the workers as well as trade unions representing them to seek remedy against an employee indulging in an unfair labour practice. We are concerned in this petition regarding the unfair labour practice with which we are concerned in this petition is of non- payment of salary.

8. Item 9 of schedule IV to the Act says that failure to implement award, settlement or agreements is an unfair labour practice. Timely payment of salary is an express or implied condition of a contract of employment. Non payment of wages is, therefore, an unfair labour practice. Sections 26 to 29 falling under chapter VI of the Act relate to unfair labour practices. Section

26 says that practices mentioned in Schedules II, III and IV shall be regarded as unfair labour practice. Section 27 says that no employer or union and no employees shall engage in any unfair labour practice. Section 28 lays down the procedure for dealing with complaints relating to an unfair labour practice. It gives a power to the Labour Court or the Industrial Court, as the case may be, to investigate into a complaint of an unfair labour practice, if made within a period of ninety days of the occurrence of such practice and confers a power on the court to entertain complaint even after 90 days if sufficient reason is shown. It provides that the decision of the court shall be in writing and shall be in the form of an order which shall be final and cannot be called in question in any civil or criminal court. The decision is however subject to review at the hands of this court under Articles 226 and 227 of the Constitution of India. No specific provision is made in Chapter VI for enforcement of the order of the court. Chapter IX of the Act, however, provides penalties for breach of any of the provisions of the Act. Section 48 provides for prosecution where an order passed under section 30 is not complied with. Section 50, as stated earlier, gives a

remedy for recovery of the money due under an order passed by the court under Chapter VI of the Act.

9. Section 30 of the Act confers a specific power on the court to an pass an interim order. The power to pass an interim order under section 30, in my view, is not referable to inherent powers of a court to grant an interim relief in aid of the power to grant a final relief under section 28 of the Act. The order under section 30 of the Act is only an order under section 30 and not an order passed under section 28 of the Act or in aid thereof. Under section 50 of the Act only the orders for recovery of money passed under Chapter VI of the Act can be enforced through a recovery certificate. The order passed under section 30 is not passed under Chapter VI of the Act and therefore cannot be enforced by issuance of a recovery certificate under section 50 of the Act.

10. The contention of a beneficial interpretation to favour the employee also cannot be accepted. The first rule of interpretation of a statute of the legislature is that the statute

should be construed according to the intent of the legislature which can be gathered from the words used in the statute itself. When the words are clear then they must be interpreted in their ordinary sense and there is no scope for gathering the intention of the legislature from any other external source. In Punjab Land Development and Reclamation Corporation Ltd. Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and others, reported in (1990) 3 SCC 682 a Constitution Bench of the Supreme Court, following the dicta of *Sussex Peerage case,* (1844) 11 Cl & Fin 85: 8 ER 1034 (HL); and its own decision in *B.N. Motto v. T.K. Nandi* (1979) 1 SCC 361 (para 14) has laid down the law as follows:

> " The cardinal rule for the constructions of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves".

11. The cardinal rule of construction of a statute is to read the statute literally, that is, by ordinary natural and grammatic meaning. When the words used are clear and un-ambiguous there is no scope for applying any other rule like the mischief

rule, in interpreting a statute. It is only when the words of a stature are unclear or ambiguous or give rise to a possibility of more than one meaning then the other rules for construction need to be looked into. Section 50 admits of no ambiguity. It clearly lays down that only for enforcement of the orders passed under Chapter VI of the Act a recovery certificate can be issued. There is no doubt that section 50 excludes execution of the orders other than those passed under Chapter VI of the Act.

12. This interpretation, in my view, does not put the workmen to any disadvantage at all. Section 50 specifically states that the remedy under it is without prejudice to any other mode of recovery, meaning thereby that the employee can recover the money due in any other mode. Section 33-C of the Industrial Disputes Act confers a remedy for recovery of money due, irrespective of whether the money is due under the Industrial Disputes Act or under any other law. The workmen thus have adequate, equally quick and efficacious remedy available to them. In view of ambiguity of the other alternate remedy the Legislature, in its wisdom, has thought fit not to confer power

under section 50 of the Act to enforce the orders other than the ones passed under Chapter VI of the Act. For these reasons, I hold that no recovery certificate under section 50 of the Act cannot be issued for recovery of money due under an interim order passed by the court under section 30 of the Act.

13. For these reasons, there is no merit in the petition. The petition is accordingly dismissed, with no order as to costs.

(D. G. KARNIK **J**)